



State of Alaska Local Boundary Commission

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PRESS RELEASE

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Legislature Urged to Fully Implement Constitutional Provisions Regarding Boroughs

The Alaska Local Boundary Commission, created under Alaska's Constitution to address borough formation and other municipal boundary matters, has submitted its annual report to the Alaska Legislature. The report urges legislative attention regarding the issue of borough government.

Noting that more than 57 percent of Alaska – an area larger than France and Germany combined – lies outside any organized borough, Local Boundary Commission Chair Darroll Hargraves noted that the report stresses that legislative attention is warranted. "Our Constitution encourages borough formation and annexation for many good reasons – none greater than it promotes maximum local self-government" Hargraves observed.

The report characterizes borough government as the cornerstone of the constitutional provisions for local government in Alaska. Echoing sentiments consistently expressed by experts over Alaska's 46 years of statehood, Hargraves said, "The Commission believes the State has yet to develop an effective policy of implementing borough government."

Hargraves concluded that there are three fundamental options. The first is to maintain the status quo – borough formation by local choice. He noted that since statehood, this approach has resulted in boroughs in which less than 4 percent of the State's population resides. No new borough has formed in more than 12 years. Hargraves stated that the Commission believes that the status quo is minimally effective because of the lack of incentives to form boroughs.

The second option is for the legislature to mandate borough government in those areas that have the capacity to operate boroughs. Hargraves noted that the 1963 Legislature mandated the formation of boroughs in which nearly 84 percent of Alaskans live today. However, Hargraves stressed that while the second option is effective, it is also divisive.

The third option – and the one preferred by the Local Boundary Commission – is to provide incentives to promote borough formation. Hargraves stressed that the framers of Alaska's Constitution envisioned that the State would provide ade-

quate incentives for borough formation. Hargraves noted that the Commission has outlined six specific incentives for consideration by the legislature.

Hargraves indicated that “The Commission believes that, perhaps, the greatest barrier to borough formation is the requirement that boroughs must pay to support schools.”¹ While repealing the requirement for local support of schools would eliminate the disincentive, the Commission notes that doing so would greatly impact the State treasury.

One alternative would be to eliminate the disincentive by levying equivalent taxes on the unorganized borough for support of schools. Four different tax options are addressed in the report. The report points out, for example, that a head tax on the unorganized borough, equivalent to the taxes paid by residents of organized boroughs for support of schools, would generate between \$15 million and \$23 million annually, depending on policy decisions regarding applicability of the tax.

Five other incentives are addressed in the report. They relate to financial aid for critical borough services; organization grants; calculation of required local contributions for schools where boroughs do not levy property taxes on oil and gas exploration, production, and pipeline transportation property; municipal land grants; and payment of National Forest receipts and shared fisheries fees and taxes.

Another major focus of the Commission’s report is the need to divide the single unorganized borough into multiple regional unorganized boroughs in accord with the Constitution. The Commission, working in concert with former State Senators and local government experts Arliss Sturgulewski and Victor Fischer, crafted legislation for consideration by the legislature to address the issue.

Attachments:

Executive Summary of Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature.

Commentary by Arliss Sturgulewski and Victor Fischer entitled, It’s Time to Fully Implement the Local Government Provisions of Our Constitution.

¹In Alaska, 34 of 53 school districts are required to pay the so-called “local contribution” required under AS 14.17.410(b)(2). Those 34 districts are the boroughs and home-rule and first-class cities in the unorganized borough. In Fiscal Year 2005, the school tax generated \$171,057,616 (and more than \$800 million over the last five years).

Executive Summary

Report of the Alaska Local Boundary Commission to the First Session of the Twenty-Fourth Alaska State Legislature



**Commemorating the 50th Anniversary of the
Convening of the Alaska Constitutional Convention**

1955 - 2005

"We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska."

The report cover includes a montage of three photographs. The "rifle range" photo at the upper left was a reminder to the Local Government Committee of its goal to refine the local government proposal (termed "Committee Proposal No. 6/a" (hereafter "Proposal 6/a")) by January 19, 1956 (a goal which, incidentally, was met). The photo to the right of the "rifle range" is the Local Government Committee in a meeting. The bottom photo shows deliberations by Convention Delegates.

The Local Government Article of Alaska's Constitution was introduced as Committee Proposal No. 6 and had its first reading on December 19, 1955. It was returned to Committee on January 4, 1956. It was then introduced as Proposal 6a and had a first reading on January 18, 1956, and ultimately adopted on January 30, 1956. Victor Fischer describes the task facing the different committees at the Constitutional convention as follows:

The nature and difficulty of substantive responsibilities differed widely among committees. In some cases, the basic structure of the article under committee jurisdiction was fairly clear, and the committee was primarily concerned with specific provisions.

....

... Other committees, in particular Natural Resources and Local Government, had major need for innovation: the former because of the vital role of resources for the future of the state and lack of precedent of constitutional treatment in other states; the latter because of the absence of developed structures of local government in Alaska.

....

... [T]he Local Government Committee, on which the author served, became involved in what appeared at times to be an almost interminable task. As there never had been any well-developed local government system outside the few urban areas in Alaska, the committee was in a position to learn from the mistakes and successes in other areas and develop new approaches suited to Alaska. Accordingly, the members not only undertook a thorough study of the structure of local government in other states, but also examined the situation in Canada, South America, Finland and the Scandinavian countries, and other parts of the world. In addition, the committee studied Alaskan needs and conditions, using in part consultant George W. Roger's analysis of Alaska's socioeconomic and geographic division. They also used the services of consultant Professor of political Science Weldon Cooper, associate director of the Bureau of Public Administration, University of Virginia. Professor Cooper assisted the committee with research and preparation of discussion drafts based on tentative committee conclusions. Owing to lack of precedent for most of the ideas being developed, however, evolution of constitutional language proved to be an extremely difficult task. As a result, the committee proceeded through numerous drafts of the local government article. In order to have a proposed article available for discussion by other delegates and by the public during recess hearings, the committee reported out a tentative draft in mid-December. After reconvening in January, however, the committee requested that the proposal be returned to committee for further consideration and rewriting. At this time, the committee had available the services of consultant John Bebout, then assistant director of the National Municipal League. After two more weeks of work, the committee reported the total rewritten article out on January 18 - one and half months after the judiciary; article had been presented to the convention.

Victor Fischer, *Alaska's Constitutional Convention* (1975), pp. 50-51 (footnotes omitted, emphasis added).

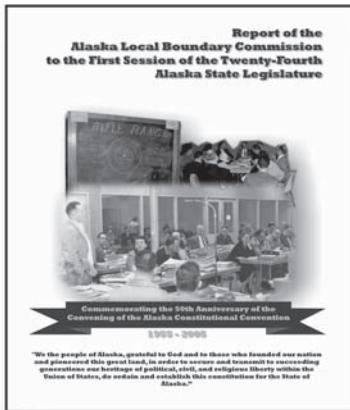
The Local Boundary Commission complies with Title II of the Americans with Disabilities Act of 1990.

Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the Local Boundary Commission Staff at 907-269-4560.

This report is also available on the Local Boundary Commission website at:

<http://www.commerce.state.ak.us/dca/lbc/lbc.htm>

Executive Summary



The report of the Local Boundary Commission (LBC) to the 2005 Legislature consists of three chapters. The first two chapters provide

background information that is helpful in understanding and considering the important public policy issues raised in Chapter 3. The report is summarized below.

Chapter 1 – Background

Chapter 1 provides information about the LBC. It notes, for example, that the framers of Alaska's Constitution concluded that a "grave need" existed for an independent, objective body to foster implementation of the constitutional framework of local government through municipal boundary determinations that reflect statewide and regional perspectives. Thus, the framers mandated the creation of the LBC, one of just five boards and commissions named in the Constitution (among 121 active boards and commissions).

Chapter 1 also notes that the LBC has a duty to study local government boundary problems. That duty serves as the foundation for the issues raised in Chapter 3.

Chapter 2 – Activities and Developments During 2004

Chapter 2 summarizes activities during 2004 relating to municipal boundary issues. Some activities are routine, but others involve critical public policy issues of statewide importance. One example of the latter, a

Constitution of Alaska Article X, Section 12

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

prospective proposal to reclassify the City of Dillingham, is discussed below.

On the surface, it may seem that a proposal to reclassify the City of Dillingham is a matter of limited interest and concern. However, the prospective Dillingham proposal represents a microcosm of the entire state in terms of the growing debate over local government boundary matters. It has potentially far-reaching implications.

In December 2004, a group of Dillingham residents announced plans to petition for reclassification of the City of Dillingham from a first-class city to a second-class city. The City of Dillingham was incorporated as a second-class city in 1963. Under a 1972 law, the City of Dillingham was reclassified by legislative fiat as a first-class city.

As a first-class city in the unorganized borough, Dillingham is obligated by State law to operate a city school district. In the current fiscal year, the City of Dillingham will pay \$1,000,000



Dillingham High School/Middle School

to support its schools. Of that, \$569,155 (more than \$1,100 per student) will be spent just to restore formula cuts to State education aid paid to Dillingham (i.e., the so-called “local contribution” required by AS 14.17.410(b)(2)). While such contributions are required from many school districts, an exception is made for more than one-third of Alaska’s 53 school districts.¹ In effect, the required “local contribution” is a State tax imposed on selected areas without regard to capacity to pay.

Adding to the debate is the fact that City of Dillingham schools are in serious disrepair. The condition of local

¹The City of Dillingham is one of 18 cities and 16 organized boroughs that are required to make such “contributions.” In total, those 34 local governments were required under AS 14.17.410(b)(2) to “contribute” \$171,057,616 in FY 2005 (and more than \$800 million over the last five years). The amount of State aid for education to those districts was reduced by the amount of the required “local contribution.” In contrast, the 17 Regional Educational Attendance Areas (REAAAs) and 2 Federal Transfer REAAAs are not subject to the requirement for local contributions and, thus, do not suffer such cuts in State aid.

school facilities raises significant concerns pertaining to both health and safety issues (e.g., mold, electrical problems, and troubles regarding the structural integrity of the Dillingham High School/Middle School). Faced with the prospect of significant increases in local taxes to support schools, last month, Dillingham voters overwhelmingly rejected a proposition to authorize the City of Dillingham to issue up to \$25 million in bonds to remedy the problems.^{II}

Reclassification proponents question why Dillingham is saddled with local responsibility for schools while many other areas of the state are not. Advocates of reclassification in Dillingham specifically cited Bethel as an example. They note that Bethel has an economy similar to Dillingham and that Bethel's population is 2.5 times greater than that of Dillingham. Based on the latest federal census, the median household income and median family income in Bethel are, respectively, 11.4 percent and 8.7 percent higher than is the

Comparison of Dillingham and Bethel

| Factor | Dillingham | Bethel |
|-------------------------|--------------|--------------|
| City Classification | First-Class | Second-Class |
| Population | 2,373 | 5,899 |
| Median Household Income | \$51,458 | \$57,321 |
| Median Family Income | \$57,417 | \$62,431 |
| Percentage in Poverty | 11.7 percent | 11.2 percent |

Population data from State Demographer (2003). Income and poverty data from 2000 Federal Census.

case in Dillingham. Further, the percentage of Dillingham residents living in poverty is slightly higher compared to Bethel.

The circumstances in Dillingham raise questions that warrant thoughtful consideration.

- Should Dillingham be allowed to abrogate its responsibility for schools?
- Should Bethel and the other 30 second-class cities in the unorganized borough with populations of 400 or more residents be compelled to reclassify, as was the case 33 years ago for Dillingham and other second-class cities with at least 400 residents?^{III}

^{II}AS 14.11.100 provides that the City of Dillingham would have been entitled to reimbursement of 60 to 70 percent of principal and interest costs associated with repairs or new construction. However, if funds appropriated by the Legislature for such reimbursement for all municipal school districts are insufficient, the available funds would be distributed pro rata among the eligible municipalities. Thus, partial reimbursement in the amount set out in statute was not guaranteed.

^{III}Chapter 2 notes that officials of the City of Bethel explored the prospect of reclassification of the city government in 1981 and again in 1997. Chapter 2 notes further that the Mayor of the City of Bethel inquired about the matter last year.

- Should the 11 unincorporated communities in the unorganized borough with populations of 400 or more residents be compelled to incorporate home-rule or first-class cities?
- How would reclassification of the City of Dillingham and the City of Bethel affect delivery of education services in their respective regions? In other words, is it better to organize school districts at the community level or regional level?^{IV} For example, should the regions encompassing Dillingham and Bethel become borough governments?^V
- If Dillingham and Bethel are included in boroughs, what boundaries should be drawn for each?^{VI}
- In a broader sense, why are communities and regions that have no local responsibility for schools, *but have the capacity to take on such responsibility*, not required to do so?

^{IV}Eighteen city school districts and two Federal Transfer REAAs are organized at the community level. Alaska's other 33 school districts (16 boroughs and 17 REAAs) operate schools on a regional basis. In 2004, the LBC, with cooperation from the Department of Education and Early Development, addressed issues relating to school district consolidation. That effort is addressed in Chapter 3.

^VRegarding Bethel, Chapter 2 notes that a study conducted 24 years ago by a private consultant concluded that borough incorporation was a "financially viable" option for the Calista region, which encompasses roughly 58,000 square miles and has a contemporary population in excess of 23,000 residents. A prospective borough for the Calista region would, presumably, be rendered more economically viable if the Donlin Creek mineral deposit is developed into an operating mine. That deposit, estimated to hold 27.8 million ounces of gold, is one of the world's largest undeveloped deposits of gold.

Regarding Dillingham, Chapter 2 notes that interest was expressed during 2004 in forming the so-called Bristol Bay "Super Borough," which would encompass the Dillingham Census Area, Lake and Peninsula Borough, and Bristol Bay Borough. Here again, the prospect for mineral development is a consideration. Specifically, the Pebble gold-copper-molybdenum deposit located in the Lake and Peninsula Borough, which holds an estimated \$28 billion in minerals, has sparked interest in borough boundary changes in the greater Bristol Bay region.

^{VI}The Donlin Creek mineral deposit is located in the Kuspuk REAA, a subregion of the Calista region. Officials and residents of the Kuspuk REAA have expressed a strong desire to limit any borough encompassing the Kuspuk area just to that subregion. In 2003, the Kuspuk REAA was inhabited by an estimated 1,573 residents. Similarly, strong interest exists among officials and residents in the Lake and Peninsula Borough in maintaining the existing boundaries of the Lake and Peninsula Borough, which encompasses the Pebble gold-copper-molybdenum deposit.

- Should the State promote the extension of borough government to areas of Alaska that have the capacity to operate boroughs, and if so, how?
- If the State does not create enough inducements for voluntary incorporation of boroughs, should it compel areas to organize as it did in 1963 for regions that encompass nearly 84 percent of all Alaskans?

The Table of Contents at the beginning of the report and the Index at the end provide a guide to readers for particular communities, regions, and topics addressed in the report.

Chapter 3 – Policy Issues and Concerns

In Chapter 3, the LBC brings public policy issues and concerns to the attention of the 2005 Alaska Legislature. The most significant of those concerns relates to key provisions of the Local Government Article of Alaska's Constitution that remain unexecuted after 46 years of Statehood. The Legislature is the appropriate body to address these concerns because of its

duties set out in Article X of Alaska's Constitution.

Lack of Incentives for Creation and Expansion of Boroughs.

Foremost among the LBC's concerns is the lack of incentives for borough incorporation and annexation. Borough government is the cornerstone of the Local Government Article of Alaska's Constitution. Chapter 3 describes compelling public policy arguments for establishment of organized borough governments throughout Alaska.

The benefits of borough government led Eben Hopson, a prominent Native leader, member of the Territorial Legislature, and State Senator, to take the following position more than 30 years ago:



Eben Hopson

If I were governor, organization of regional borough government would become one of my primary goals, and I would ask the legislature to fashion special revenue sharing legislation to finance their operation until sufficient tax base was developed for local financing.

As outlined in Chapter 3, the framers of Alaska's Constitution clearly anticipated that the State would make



borough government an appealing option. However, statistics provide convincing evidence that the framers' vision has not been fulfilled.

In fact, incentives to form boroughs today are virtually non-existent. Chapter 3 outlines six specific measures that the LBC believes will create significant incentives for the extension of borough government.

Clearly, one of the greatest barriers to borough formation is the requirement that boroughs must pay the State school tax in the form of the so-called "local contribution" required by AS 14.17.410(b)(2). While repealing the tax would eliminate the disincentive, doing so would have significant adverse fiscal impact on the State (at the current level, more than \$850 million over five years).

A better alternative, in the LBC's view, is to eliminate the disincentive by levying taxes on the unorganized borough. Four different tax options are explored in the report. For example, a head tax on the unorganized borough equivalent to the school tax under AS 14.17.410(b)(2) paid by residents of organized boroughs would generate between \$15 million and \$23 million annually, depending on policy decisions regarding applicability of the tax.

Five other incentives are addressed in Chapter 3. They relate to financial aid for critical borough services; organi-

zation grants; calculation of required local contributions for schools where boroughs do not levy property taxes on oil and gas exploration, production, and pipeline transportation property; municipal land grants; and payment of National Forest receipts and shared fisheries fees and taxes.

Standards for Unorganized Boroughs.

Another major concern of the LBC is the lack of standards for the establishment of unorganized boroughs. Alaska's Constitution requires the entire state to be divided into boroughs – organized or unorganized. The Constitution imposes a duty upon the Legislature to enact standards and procedures for

Constitution of Alaska Article X, Section 3 - Boroughs

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

establishment of organized and unorganized boroughs. Each borough must embrace a large, natural region reflecting social, cultural, economic, geographic, and other characteristics.

The framers of our Constitution allowed for unorganized boroughs because they believed that, at least initially, some boroughs might lack the fiscal and administrative capacity to operate as organized boroughs. Presumably, the distinctions in terms of standards for unorganized and organized boroughs would be limited to fiscal and administrative capacity.

Without enacting standards and procedures for establishment of unorganized boroughs, the 1961 Legislature simply grouped all unorganized regions into a single unorganized bor-

ough. As has long been recognized, doing so has significantly impeded the natural evolution of borough government. Division of today's single unorganized borough into regional unorganized boroughs would foster a number of benefits as outlined in Chapter 3.

Other Issues.

In addition to the foregoing, the LBC raises four other issues in Chapter 3. Those relate to funding for borough feasibility studies, the need to refine a 2001 amendment dealing with local contributions for schools, the 2004 school consolidation study, and staff resources needed to support the LBC.

It's Time to Fully Implement the Local Government Provisions of Our Constitution.

By Arliss Sturgulewski and Victor Fischer

January 2005

On the eve of the 50th anniversary of Alaska's Constitutional Convention and the beginning of our 46th year of statehood, it is fitting to reflect on how we have implemented our Constitution. For the most part, it seems we have done quite well, with one major exception – fully implementing the local government article.

Framers of Alaska's Constitution provided for a system of boroughs. Boroughs were a new concept, envisioned to provide self-government and public services on an areawide basis. Since statehood, 16 boroughs have been organized in regions as diverse as Anchorage, Kodiak Island, and the North Slope. Half were organized by legislative mandate, while the others formed voluntarily. Organized areas encompass about forty percent of Alaska.

The Constitution requires that the entire state be divided into boroughs – organized or unorganized. Each was to encompass a large, natural region reflecting social, cultural, economic, geographic, and other characteristics. But rather than dividing the state into boroughs, the 1961 legislature simply grouped all non-organized areas into a one unorganized borough, which forms a meaningless glob that stretches from one end of Alaska to the other. Subsequent legislatures have shirked their responsibility to make the system work.

“Thirty years ago, the late Eben Hopson . . . stated: ‘If I were governor, organization of regional borough government would become one of my primary goals.’ Wise words.”



Constitutional provision for unorganized boroughs was made to allow for transition to organized status, and to recognize that some regions might lack the fiscal and administrative capacity to operate boroughs. In either case, the State was to provide services in unorganized boroughs, use them as regional planning units, and allow for maximum local participation and responsibility. It is time for the State to initiate establishment of unorganized boroughs, as required by Alaska's Constitution.

A number of unorganized areas have the capacity to operate boroughs, but their residents have not initiated action to do so. There are serious disincentives to incorporation as a borough.

Continued on back

They include mandates to pay a portion of school operations, inadequate money for organizational planning, lack of assessment data, and concern over school district consolidation.

There are many public policy reasons to promote borough formation. Boroughs provide (1) maximum local self-government, (2) a legal framework for regional services, (3) stable administrative capacity, (4) local responsibility and control over local affairs, (5) accountability to the public, (6) increased local and private land ownership, (7) greater control over education and ability to supplement state school funding, (8) consolidation of school districts, (9) the means for regional alcohol control, (10) ability to promote economic development, (11) a proper role for State government, and (12) greater taxpayer equity.

Boroughs are Alaska's vehicle for regional self-rule. They have proven effective both when they cover urban areas and when they encompass exclusively rural populations. Today, seven out of every eight Alaskans live in organized boroughs, as do two-thirds of all Alaska Natives. Many reside in boroughs where citizens have adopted home rule charters, exercising the ultimate level of self-government.

Action is way overdue to divide this amorphous mass into regional units that make sense. Some years ago, after thorough study and extensive hearings, the Alaska Local Boundary Commission divided the state into "model boroughs." In accordance with the Constitution, the models encompass large, natural regions and reflect social, cultural, economic, geographic and other characteristics.

The time has come to create a series of organized and unorganized boroughs in the rest of the state as set out in the Constitution.

Both State and local leadership will be required to carry out the Constitution's stated purpose "to provide for maximum local self-government". The effort of creating boroughs will be worthwhile, for it will give the people of local communities a real voice in how government touches their lives, as well as pursuing the general public interest.

Thirty years ago, the late Eben Hopson – territorial legislator, State senator, and first mayor of the North Slope Borough – stated: "If I were governor, organization of regional borough government would become one of my primary goals." Wise words.

Arliss Sturgulewski is a Republican, and Victor Fischer is a Democrat. Both have expertise in matters of local government; both have distinguished records in terms of public service at the local and state levels, including the Alaska State Senate. Victor Fischer was a delegate to Alaska's Constitutional Convention, where he served as Secretary of the Local Government Committee.